

§ 146.8

17 CFR Ch. I (4–1–05 Edition)

assure fairness to the individual in the determination.

§ 146.8 Amendment of a record.

(a) Any individual may request amendment of information pertaining to him which is contained in a system of records maintained by the Commission and which is filed under his name or other individual identifier if he believes the information is not accurate, relevant, timely or complete. A request for amendment shall be directed to the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(b) A request for amendment may be made by mail or in person and shall: (1) Be in writing and signed by the person making the request; (2) describe the particular record to be amended with sufficient specificity to permit the record to be located among those maintained by the Commission; and (3) specify the nature of the amendment sought and the justification for the requested change. The person making the request may be required to provide the information specified in §§146.3 and 146.4 of these rules in order to simplify identification of the record and permit verification of the identity of the person making the request for amendment.

(c) Receipt of a request for amendment will be acknowledged in writing within ten days (excluding Saturdays, Sundays, and legal public holidays) except that, if the individual is given notice within the ten day period that his request will or will not be complied with, no acknowledgement is required.

(d) Assistance in preparing a request to amend a record may be obtained from the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(e) Upon receipt of a request for amendment the Executive Director of the Commission or a person designated by the Executive Director shall promptly determine whether the record is materially inaccurate, incomplete, misleading, or is irrelevant or not

timely, as claimed by the individual, and, if so, shall cause the record to be amended in accordance with the individual's request.

(f) If the Executive Director or designee grants the request to amend the record, the individual shall promptly be advised of the decision and of the action taken, and notice shall be given of the correction and its substance to each person or agency to whom the record had previously been disclosed, as shown on the record of disclosures maintained in accordance with §146.6(c).

(g) If the Executive Director or designee disagrees in whole or in part with a request for amendment of a record, the individual shall promptly be notified of the complete or partial denial of his request and the reasons for the refusal. The individual shall also be notified of the procedures for administrative review by the Commission of any complete or partial denial of a request for amendment, which are set forth in §146.9.

(h) If a request is received for amendment of a record prepared by another agency which is in the possession or control of the Commission, the request for amendment will be forwarded to that agency. If that agency determines that the correction should be made, the Commission will amend its records accordingly and notify the individual making the request for amendment of the change. If the other agency declines to make the amendment, the Executive Director or designee will independently determine whether the amendment will be made to the record in the Commission's possession or control, considering any explanation given by the other agency for its decision.

[41 FR 3211, Jan. 21, 1976, as amended at 41 FR 28261, July 9, 1976; 60 FR 49335, Sept. 25, 1995]

§ 146.9 Appeals to the Commission.

(a) Any individual may petition the Commission:

(1) To review a refusal to comply with an individual request for access to records pursuant to the Privacy Act, 5 U.S.C. 552a(d)(1), and §§146.3 and 146.5 of the rules in this part;

(2) To review denial of a request for amendment made pursuant to §146.8;

(3) To correct any determination that may have been made adverse to the individual based in whole or in part upon inaccurate, irrelevant, untimely or incomplete information;

(4) To correct a failure to comply with any other provision of the Privacy Act, 5 U.S.C. 552a, and the rules of this part 146, which has had an adverse effect on the individual.

(b) The petition to the Commission shall be in writing and shall (1) state in what manner it is claimed the Commission or any Commission employee has failed or refused to comply with provisions of the Privacy Act or of the rules contained in this part 146, and (2) set forth the corrective action the petitioner wishes the Commission to take. The petitioner may, if he wishes, state such facts and cite such legal or other authorities as he considers appropriate.

(c) The petition shall be directed to the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(d) The Commission will make a determination of any petition filed pursuant to this §146.9 within thirty days (excluding Saturdays, Sundays and legal public holidays) after receipt by the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat of the petition, unless for good cause shown, the Commission extends the 30-day period. If a petition is denied, the Commission will notify the petitioner in writing and state the reasons therefor.

(e) Where the petition is made for review of a denial of a request for amendment made pursuant to §146.8, the following additional procedures shall apply:

(1) If upon review the Commission grants the petition to amend the record, notice of the correction and its substance shall be given to each person or agency to whom the record had previously been disclosed, as shown on the record of disclosures maintained in accordance with §146.6(c) of these rules.

(2) If upon review the initial denial of the request for amendment is upheld in whole or in part, the individual shall be notified of the provisions for judicial

review of that determination which are set forth in section 552a(g)(1)(A) and (2)(A), of title 5 of the U.S. Code and the provisions for disputed records set forth in paragraph (e)(3) of this section.

(3) If after review the Commission has declined to amend the records as the individual has requested, the individual may file with the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat a concise statement setting forth why he disagrees with the Commission's denial of his request. Any subsequent disclosure containing information about which a statement of disagreement has been filed shall clearly note the portion which is disputed, and include a copy of the individual's statement. The Commission may also include a copy of a concise statement explaining its reasons for not making the amendments requested.

(f) The General Counsel or his or her designee is hereby delegated the authority to act for the Commission in deciding appeals under this section. The General Counsel may, in his or her sole and unfettered discretion, refer such appeals to the Commission for decision.

[41 FR 3211, Jan. 21, 1976, as amended at 41 FR 28261, July 9, 1976; 45 FR 26954, Apr. 22, 1980; 51 FR 26874, July 28, 1986; 60 FR 49336, Sept. 25, 1995]

§ 146.10 Information supplied by the Commission when collecting information from an individual.

The Commission will inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual of:

(a) The authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(b) The principal purpose or purposes for which the information is intended to be used;

(c) The routine uses which may be made of the information, as published in the FEDERAL REGISTER; and